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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In Re )  
 )  
Advanced Television Systems ) MM Docket No. 87-268  
and Their Impact upon the )  
Existing Television Broadcast )  
Service )

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS OF SECOND GENERATION OF IOWA LTD.

Second Generation of Iowa Ltd. ("Second Generation"), licensee of Station KFXA(TV), Cedar Rapids, Iowa, by its attorney, submits these comments in response to the Sixth Further Notice of Proposed Rulemaking ("Sixth Notice") in the above-captioned proceeding. Second Generation's Comments are directed to the issues raised in paragraph 63 of the Sixth Notice.

In paragraph 63, the Commission stated that, in order to preserve its ability to develop the DTV Table, it would condition the grant of all construction permits for modification of technical facilities, including those filed prior to the adoption of the Sixth Notice but granted after its adoption, on the outcome of the Commission's final decision on the DTV Table of Allotments. The Commission specifically requested comment on whether this condition "should involve different consequences for applications for modifications on file as of the date of adoption of this Further Notice, as opposed to such applications filed after that date."

Second Generation is directly affected by the action taken in

paragraph 63 of the Sixth Notice and, for the reasons set forth below, Second Generation submits that both equitable and public interest considerations warrant treating Second Generation differently from parties that submitted applications for new or modified facilities filed after the notice was adopted.

At the time Second Generation entered into the contract to acquire KFXA (formerly KOCR), the licensee of the station was in severe financial difficulty, much of the equipment of the station had been seized by its creditors, the station's studio and transmitter site leases had been terminated for non payment of rent, the station had lost its Fox Network Affiliation, and the station was dark, and had been dark for more than a year. The former licensee's financial distress was attributable to a significant degree, arguably primarily, to the fact that the station's licensed facilities provided Grade B service only to approximately 48% of the television homes in the DMA. See Engineering Statement of Roy P. Stype, III, attached hereto ("Engineering Statement"). Second Generation's decision to purchase KFXA in its distressed financial decision was predicated on engineering studies which showed that it was feasible under the existing Television Table of Allotments substantially to upgrade KFXA's technical facilities, and thus its competitive position in the Cedar Rapids-Waterloo Television Market. Were it not possible to upgrade KFXA's facilities, neither Second Generation nor any

other prudent business would have been willing to purchase KFXA and invest the monies needed to make the station competitive and financially viable.

Promptly after signing a contract to purchase KFXA, Second Generation initiated a search for a transmitter site at which a tall tower could be constructed for KFXA that would enable the station substantially to increase its coverage. Even while a search for such a site was underway, Second Generation invested substantial sums to redeem KFXA's equipment from the former licensee's creditors and to refurbish the equipment so that the station could be quickly returned to the air by the former licensee under a time brokerage arrangement. With the financial support provided by Second Generation under the time brokerage arrangement, KFXA was returned to the air on or about August 1, 1995, from its licensed site. On October 18, 1995 while Second Generation's application (BALCT-950425KF) was still pending, Second Generation filed an application (BPCT-951018KE), with the consent of the then licensee, for a construction permit (the "Construction Permit") to relocate KFXA's facilities to a site 37 kilometers west of the station's licensed site and to construct facilities which would enable KFXA to operate with peak visual effective radiated power of 5000 kilowatts with antenna height 452 meters above average terrain. See Engineering Statement. This Construction Permit was granted on the very day that the Sixth Notice was released, and

less than three weeks after the notice was adopted. Second Generation promptly constructed the facilities authorized in BPCT-951018KE and filed an application to license the facilities on October 2, 1996. The station is currently operating with the new facilities which enable it to provide Grade B coverage to 73% of the television households in the Cedar Rapids-Waterloo DMA, see Engineering Statement, a 58% increase in the percentage of DMA television households that received Grade B coverage from the station's former facilities.

As noted above, Second Generation's decision to purchase KFXA was predicated upon the fact that it was technically feasible under the Commission's rules in effect at the time the contract for the purchase was entered into to make substantial improvements in KFXA's technical facilities, improvements that were essential to make the station a viable competitor in the Cedar Rapids-Waterloo television market. Second Generation also proceeded quickly to file its application to relocate and upgrade KFXA's facilities. The application was filed more than nearly nine months prior to adoption of the Sixth Notice and, based upon conversations that Second Generation had with the staff of the TV Branch of the Commission's Video Services Division, the application was ripe for grant by late June of 1996 and would have been granted in late June, or early July, 1996 at the latest were it not for delays in the final processing of the application that were attributable to

internal "staffing" problems. Were it not for the delays in completing action on the application, it would have been granted without the condition that was included based on paragraph 63 of the Sixth Notice relating to the final DTV Allotment Table.

Upon grant of the Construction Permit, Second Generation proceeded immediately to construct the facilities authorized by the permit, and invested in excess of \$3 million in the construction of those facilities. Second Generation did so, notwithstanding the fact that its permit was conditioned on the final outcome of the DTV proceeding because (i) KFXA's Fox Network affiliation had been obtained on the condition that Second Generation would actively prosecute the application for the Construction Permit and would promptly construct the facilities specified in the permit once it was granted and (ii) operation with the facilities specified in the Construction Permit is essential to KFXA becoming and remaining competitive in the Cedar Rapids-Waterloo television market.

In view of the foregoing, Second Generation submits that it would be both inequitable, and contrary to the public interest, for the Commission to limit the DTV facilities that it allots to KFXA to those that would replicate the coverage that KFXA produced operating with its former facilities which are no longer in use. Such a limitation would be inequitable because Second Generation made its business decisions to acquire KFXA based upon the television Table of Allotments in effect at the time the business

decision was made which permitted Second Generation to upgrade the KFXA's facilities to achieve the coverage realized with the facilities authorized in the Construction Permit. It would be contrary to the public interest as it would deprive a substantial percentage of the residents of the Cedar Rapids-Waterloo television market of the Fox Network service provided by KFXA and, by relegating KFXA to facilities that serve less than 50% of the television homes in that market would most likely result in the station permanently going dark.

Finally, as shown in the attached Engineering Statement, allotting KFXA DTV facilities that will replicate the facilities authorized in the Construction Permit will have virtually no impact on the DTV Table of Allotments proposed in the Sixth Notice. This being the case, Second Generation respectfully submits that the facilities authorized in the Construction Permit, which have been built and for which a license application is pending, should be used in determining the DTV facilities that are to be allotted for use by KFXA.

Respectfully submitted,



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*Attorney for Second Generation of  
Iowa Ltd.*

Dated: November 20, 1996

ENGINEERING STATEMENT IN  
SUPPORT OF COMMENTS

MM DOCKET 87-268

Second Generation of Iowa, Ltd.  
Cedar Rapids, IA

November 18, 1996

Prepared for: Mr. Tom Embrescia  
Second Generation of Iowa, Ltd.  
One Radio Lane  
Cleveland, OH 44114

**CARL E. SMITH CONSULTING ENGINEERS**

ENGINEERING AFFIDAVIT

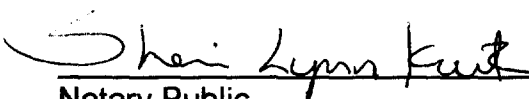
State of Ohio                                 )  
  ) ss:  
County of Summit                         )

Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by Second Generation of Iowa, Ltd., to prepare the attached "Engineering Statement In Support Of Comments - MM Docket 87-268."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.

  
\_\_\_\_\_  
Roy P. Stype, III

Subscribed and sworn to before me on **November 18, 1996.**

  
\_\_\_\_\_  
Notary Public

SHERI LYNN KURTZ, Notary Public  
Residence - Summit County  
State Wide Jurisdiction, Ohio  
My Commission Expires June 14, 2000

/SEAL/



## ENGINEERING STATEMENT

This engineering statement is prepared on behalf of Second Generation of Iowa, Ltd., licensee of KFXA(TV) - Cedar Rapids, Iowa. KFXA is presently licensed to operate on Channel 28 with a maximum peak visual effective radiated power of 1450 kilowatts at 205 meters above average terrain, utilizing a directional antenna. KFXA also holds a construction permit (BPCT-951018KE) to relocate its transmitter site 37 kilometers to the west of its authorized site and improve its operating facilities. This construction permit, which was granted on August 14, 1996, authorizes operation with a maximum peak visual effective radiated power of 5000 kilowatts at 452 meters above average terrain, utilizing a directional antenna. A license application to cover this construction permit was filed with the FCC on October 2, 1996, and KFXA is presently operating with the facilities authorized by this construction permit pursuant to the automatic program test provisions of Section 73.1620 of the FCC Rules.

The application for the KFXA construction permit was filed on October 18, 1995, more than nine months prior to the July 25, 1996, adoption of the Sixth Further Notice of Proposed Rulemaking in MM Docket 87-268, the DTV allotment proceeding. This application was not granted, however, until August 14, 1996, nearly three weeks after the adoption of this Sixth Further Notice and concurrently with the release of this document. As a result of the timing of the grant of this application, the KFXA construction permit is conditioned upon the outcome of the DTV allotment proceeding, pursuant to Paragraph 63 of this Sixth Further Notice. As a result of this condition, it may be necessary for KFXA to reduce power or modify the facilities authorized by this construction permit to prevent possible conflicts with the DTV allotments to be made in this proceed-

ing. Furthermore, as a result of the timing of the grant of the KFXA construction permit, the DTV facilities proposed for KFXA in this proceeding propose to replicate the service area of the facilities authorized by the KFXA license, which are no longer being utilized.

The current licensee acquired KFXA as a failed station authorized to operate with facilities which were insufficient to provide adequate service to the Cedar Rapids-Waterloo market, providing predicted Grade B service to only approximately 48% of the television homes in the DMA. This situation was further aggravated by the decrepit condition of the KFXA technical facilities, which was so unreliable that it prevented KFXA from consistently providing service to its authorized service area. For this reason, it was necessary for the licensee of KFXA to first make interim modifications to the station's operating facilities, including the installation of a new antenna, in order to provide reliable service to the substandard service area authorized by the KFXA licensed facilities. At the same time, the licensee also began a search for a new transmitter site suitable to provide competitive coverage of the market and diligently pursued the authorization and construction of the facilities with which KFXA presently operates under automatic program test authority, which provide Grade B service to approximately 73% of the television households in the DMA. The condition imposed on the KFXA construction permit conditioning it on the outcome of the DTV allotment proceeding casts a pall over the considerable expenditures made by the licensee to improve the station's operating facilities to provide a competitive signal in the market. The proposal to replicate only the coverage of the facilities authorized by the KFXA license, which are no longer in use, in proposing a DTV allotment for KFXA similarly jeopardizes the significant expenditures made in good faith by the licensee to provide a competitive marketplace signal.

An analysis was conducted of the facilities authorized by the KFXA construction permit relative to the draft Table of DTV Allotments included in the Sixth Further Notice, in order to evaluate the differential impact of these facilities on the DTV allotments proposed in this draft table in comparison to the impact of the facilities authorized by the KFXA license. This review found that the only potential impact of KFXA on this draft table involves proposed DTV allotments on 14th adjacent channels, with neither the licensed KFXA facilities nor the facilities authorized by the KFXA construction permit meeting the interim spacing requirements to these proposed allotments:

KCRG-TV	Cedar Rapids, IA	Channel 14
KGAN	Cedar Rapids, IA	Channel 42

Thus, it appears that the facilities authorized by the KFXA construction permit will have virtually no impact of the DTV Table of Allotments proposed in the Sixth Further Notice when compared to the impact of the licensed KFXA facilities.

A similar analysis was also conducted with regard to replicating the facilities authorized by the KFXA construction permit on the proposed KFXA DTV channel (27) specified in this draft table, relative to replicating the facilities authorized by the KFXA license on this channel. This analysis found that replicating the facilities authorized by the KFXA construction permit on Channel 27 would cause no conflicts with the draft DTV table and would not aggravate the conflicts which would exist between DTV facilities on Channel 27 replicating the licensed KFXA facilities and proposed NTSC facilities on Channel 22 in Waterloo, Iowa, and authorized, but unbuilt, NTSC facilities on Channel 20 in Iowa City, Iowa. Thus, it also appears that replicating the facilities authorized by the KFXA construction permit for the proposed DTV operation on Channel 27

will not adversely impact the implementation of the draft TV Table of Allotments contained in the Sixth Further Notice.